

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM J. PASSARELLA, JR., :

Plaintiff : CIVIL ACTION NO. 3:20-1092

v. : (JUDGE MANNION)

INTERNAL REVENUE SERVICE, :

Defendant :

MEMORANDUM

Presently before the court is the August 17, 2020 Report and Recommendation (“Report”) of Magistrate Judge Mehalchick, (Doc. 8), which recommends that the complaint of *pro se* plaintiff William J. Passarella, Jr., which he commenced on June 29, 2020, pursuant to the Federal Tort Claims Act, (Doc. 1), be voluntarily dismissed without prejudice under Fed.R.Civ.P. 41(a)(1), as he requested. The Report finds that plaintiff’s August 5, 2020 filing, “Motion to Dismiss without Prejudice,” requesting, “Please dismiss lawsuit against Internal Revenue Service!”, (Doc. 7), be construed as a notice of voluntary dismissal pursuant to Fed.R.Civ.P. 41(a)(1)(A)(i). The Report also recommends that plaintiff’s motion for leave to proceed *in forma pauperis*, (Doc. 2), and his motion to supplement, (Doc. 5), be denied as moot. To date, the defendant Internal Revenue Service has

not been served. No objections have been filed to the Report by the plaintiff, and the time within which objections were due has expired. For the following reasons, the Report, (Doc. 8), will be **ADOPTED** and, plaintiff's complaint, (Doc. 1), will be **DISMISSED WITHOUT PREJUDICE**.

I. STANDARD OF REVIEW

Where no objections are made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."

[Fed.R.Civ.P. 72\(b\)](#), advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); [M.D.Pa. Local Rule 72.3](#).

II. DISCUSSION

Since Judge Mehalchick states the proper standard regarding a Rule 41(a)(1) notice of voluntary dismissal, the court will not repeat it herein.

Suffice to say that Judge Mehalchick analyzes the standard and applies it to plaintiff's filing and, explains why the plaintiff's action should be dismissed without prejudice under Rule 41(a)(1). Thus, the court will not rehash this thorough explanation in the Report.

The court has reviewed the reasons presented by Judge Mehalchick for recommending that the plaintiff's complaint be dismissed without prejudice, and because the court agrees with the sound reasoning that led the Judge to the conclusions in her Report and finds no clear error on the face of the record, the court will adopt the Report in its entirety.

III. CONCLUSION

In light of the foregoing, Judge Mehalchick's Report, (**Doc. 8**), will be **ADOPTED IN ITS ENTIRETY**, and plaintiff's complaint, (**Doc. 1**), will be **DISMISSED WITHOUT PREJUDICE**. An appropriate order shall follow.

s/ *Malachy E. Mannion*

MALACHY E. MANNION
United States District Judge

DATE: March 18, 2021

20-1092-01